

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1637 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NAZIMKHAN JILEDARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Baroda, passed an order on 9th February, 1999, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act. The grounds of detention indicate that an offence vide Crime Register No.II-3/98 came to be registered against the petitioner for an offence punishable under Section 25(1)(a) and 29 of the Arms Act. Statements of

three witnesses came to be recorded to indicate that the petitioner was involved in illegal activities and used force to pursue those activities which, ultimately, resulted into disruption of the public order. The detaining authority recorded a satisfaction after verifying the statements of those witnesses that they, in fact, suffer from fear of the petitioner and that their identity needs to be not disclosed in exercise of powers under Section 9(2) of the PASA Act and, ultimately, passed the order of detention holding that the petitioner is a 'dangerous person' as defined under the PASA Act.

#. The petitioner has challenged the detention on various grounds by preferring this petition under Article 226 of the Constitution. It is contended by the petitioner in the petition that the detaining authority has mechanically exercised the powers under Section 9(2) of the PASA Act, which has affected the right of the petitioner of making an effective representation guaranteed under Article 22(5) of the Constitution. Another ground that is raised by the petitioner in the petition is that the order passed by the detaining authority is without application of mind and is of a mechanical nature. The authority must be subjectively satisfied about each of such witnesses and their identity whereas in the instant case, the detaining authority has not verified statements of one of the witnesses and the order is, therefore, bad in law and the same may be quashed and set aside by allowing this petition.

#. Mr. Joshi appearing for Mr. B.S. Patel, learned advocate for the petitioner has emphasized and relied on the ground of improper exercise of powers under Section 9(2) of the PASA Act on account of non-examination and verification of the statement of one of the witnesses. He submitted that on this ground alone the petition deserves to be allowed.

#. Mr. H.H. Patel, learned Assistant Government Pleader appearing for respondent, after verifying the file states that on factual aspect the contention of the petitioner is correct that statement of one of the witnesses has not been verified by the authority.

#. Mr. Patel has, however, tried to justify the order of detention on various other grounds.

#. Considering the facts of the present case, one factual aspect remains undisputed, namely, that the detaining authority has exercised the powers for detention after being subjectively satisfied about the

need to exercise the privilege under Section 9(2) of the PASA Act. That powers is exercised in respect of all the three witnesses. It also remains undisputed that one of the witnesses has not been examined and his statement has not been verified by the detaining authority. The result is that the detaining authority could not have arrived at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act in respect of that witness and, therefore, the exercise of powers under Section 9(2) to that extent would stand vitiated as having been exercised without actual application of mind. The entire order of detention, therefore, would stand vitiated and the petition deserves to be allowed.

#. In the result, the petition is allowed. The impugned order of detention dated 9th February, 1999, passed by the detaining authority in respect of the petitioner-Nazimkhan Jiledarkhan Pathan is hereby quashed and set aside. The petitioner-detenu is order to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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